



To: Michigan House of Representatives Committee on Judiciary
From: Michigan Association of Broadcasters
RE: House Bill 4234 (H-3)
Date: June 2, 2015

***Law Enforcement Body-Worn Cameras and Access to Records under the
Freedom of Information Act (FOIA)***

Michigan Association of Broadcasters (MAB), representing 352 television and radio stations in the state of Michigan, is strongly opposed to House Bill 4234 (H-3). We appreciate the opportunity to voice our concerns on this legislation and acknowledge the time and thought that went into creating this legislation.

Body-worn cameras are great tools for law enforcement personnel to engender public trust and create oversight for the police officers. The use of body-worn cameras by a number of law enforcement agencies across the country has shown reduction in police use of force and dishonest complaints against the police officers, as documented by the U. S. Department of Justice study, called "*Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned.*" Source: (<http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>)

While our organization is a voice in support of transparency to ensure true public oversight of the government agencies, we recognize that these videos present privacy concerns. There are ways to balance personal privacy, the interests of law enforcement and government transparency.

A blanket exemption covering body-worn camera footage is the result that makes the least sense.

*House Bill 4234 (H-3) is particularly problematic as it places body-worn camera footage, in connection with criminal or internal investigation, outside the purview of FOIA by stating that the footage is **not a public record** (Section 5). HB 4234 H-3 places such footage outside any FOIA provisions and exemptions, including the ones listed in Section 5 subsection (a) – (f) which become null and void under the H-3 bill language as it is currently drafted.*

One other specific concern in this legislation creates a new category of '*private places*' as exemptible under the FOIA. The FOIA has an existing privacy exemption, which is meant to confirm with the Michigan common law on the invasion of privacy. This privacy exemption protects persons under certain circumstances – it does not extend such privacy protection to 'places.' Under the Michigan jurisprudence, the concept of privacy is a *uniquely personal* concept.

Exempting these recordings from the FOIA removes any chance of impartial, neutral and judicial review of exemptions as provided by the FOIA. Moreover, many concerns were expressed about how the law enforcement will collect, retain, use, and disclose these recordings. Each of those issues bears on the public's right to know.

Broadcasters have worked successfully with law enforcement and the Legislature on PA 422 of 1976 – the Freedom of Information Act. Almost all state open records laws contain various exemptions that operate on a case-by-case basis for records that have serious privacy implications or that are investigatory in nature.

These exemptions are often balanced against the public interest in disclosure of the records. Exempting large categories of police body-worn camera footage from open record requirements, in contrast, would impose a blanket rule preventing disclosure, and circumvent the analysis of the privacy or investigative interests for any given record.

MAB feels that most of the concerns in this bill are already covered by current FOIA laws. At best, this legislation is redundant and, at worse, it expands FOIA exemptions in new ways that will inhibit the citizens' right to know and the media's job of reporting on how government works to its interested citizens.

MAB encourages the committee to adopt the language requiring body-worn camera footage be subject to currently existing FOIA provisions and exemption.